U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33948048

Date: SEPT. 30, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a researcher who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field

through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner is a cancer researcher specializing in molecular cancer biology and cancer metabolism. He earned his foreign Ph.D. in 2017 and when he filed the petition, he was serving as a postdoctoral fellow at a U.S. academic medical center.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director decided that the Petitioner satisfied two of the criteria relating to judging and authorship of scholarly articles, but he had not satisfied the criteria associated with original contributions of major significance. On appeal, the Petitioner maintains that he meets the evidentiary criteria relating to contributions. After reviewing all the evidence in the record, we will not disturb the Director's decision relating to the criteria they granted. And we agree with the Director that the Petitioner has not fulfilled the contributions of major significance requirements.

Before we evaluate the regulatory requirements, we address an issue the Petitioner alleges in the appeal brief: that the Director abused their discretion through various methods in the denial decision. The Petitioner made this allegation four times in the appeal brief and in one instance cited to the USCIS Policy Manual indicating it "prohibits the arbitrary exercise of discretion, as well as consistent rationale and reliance on biases or assumptions." In doing so, the Petitioner cited "1 USCIS-PM E.9(B)(3)." That policy guidance relates to discretionary denials, but this petition did not include the Director's discretion.

Even setting that aside, it does not appear this allegation is even within our jurisdiction or authority to decide, which is established through DHS Delegation No. 0150.1 para. (2)(U) (Mar. 1, 2003) (delegating appellate authority over those case types listed at 8 C.F.R. § 103.1(f)(3)(iii) (2003)). As we state above, the standard of review we use in these administrative proceedings is de novo and we generally do not rule on an abuse of discretion standard.[1]

[1] This is not to say that within our de novo review and within appeals that do include discretion as an element, we avoid evaluating a denial decision's discretionary elements. We review questions of law, policy, fact, and discretion on a de novo basis. *Christo's Inc.*, 26 I&N Dec. at 537 n.2; *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 542 n.1 (AAO 2015).

Abuse of discretion is a standard of review appellate courts use to review lower court decisions and is not applicable in these proceedings. Relating to administrative law, 5 U.S. Code § 706(2)(a) governs the abuse of discretion concept. That statute states that when a federal court is reviewing an administrative agency's decision, the court will set it aside when the decision was either "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." But as one can see, this too relates to how federal courts review an administrative agency's decision and falls outside of this office's authority. Based on a lack of jurisdiction on this topic, we will not consider these claims any further.[2]

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 586 U.S. 392, 415 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Director determined that the Petitioner did not meet the requirements of this criterion discussing his publication record, his citation record, and recommendation letters. On appeal the Petitioner raises several issues.

We begin with the Petitioner's questions relating to the preponderance of the evidence, as he alleges the Director did not properly apply the relevant portion of the *Chawathe* decision that states "the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Chawathe*, 25 I&N Dec. at 376. It appears where the Petitioner slightly diverts from *Chawathe's* findings is when he changes the text from "probative value" to "probative nature." And in doing so, he diverts focus from how persuasive the relevant evidence should be, to its inherent quality or character. We consider the Petitioner's focus on "probative nature" to already be encompassed within *Chawathe's* findings relating to the evidence's "credibility."

[2] We are also not persuaded by the Petitioner's attempts to distinguish his case from the situation in *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). As a result, we do not agree that the Director misapplied that precedential decision. Ultimately, a petitioner must establish eligibility at the time they file the visa petition. 8 C.F.R. § 103.2(b)(1), (12). USCIS may not approve a visa petition if the filing party was not qualified at the priority date but expects to become eligible at a subsequent time. *See Matter of Izummi,* 22 I&N Dec. 169, 175–76 (Assoc. Comm'r 1998); *Katigbak*, 14 I&N at 49.

Setting that technicality aside, we reviewed the Director's analysis and we do not identify any indication that they increased the standard, not even implicitly, by demanding more conclusive evidence than the regulation calls for. Ultimately, the Director stated:

> Although the authors of the submitted letters state that other researchers relied on the [petitioner's] research, the petitioner did not submit objective, documentary evidence to support their statements. Letters of recommendation written by experts may be helpful, but the major significance of the [petitioner's] work must be demonstrated by preexisting, independent, and objective evidence. Letters of support alone generally may not be sufficient to meet this criterion. Letters, though not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use such letters as advisory opinions submitted by expert witnesses. However, USCIS is ultimately responsible for making the final determination of the alien's eligibility. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988).

Still on the preponderance topic, in the appeal, the Petitioner discusses support letters he submitted, and he takes issue with the Director requiring other independent evidence outside of the letters. But satisfying the contributions of major significance is arguably one of the most challenging regulations to meet among all the employment-based requirements. And the Director's analysis conveyed this aspect without misapplying the standard of proof.

> How much of a showing is sufficient to establish eligibility by a preponderance of the evidence will often turn upon the factual circumstances of each case. There are no magic words or mathematical formulas that can describe a preponderance of the evidence so it can be applied mechanically in every case . . . . But, when something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true.

Matter of E-M-, 20 I&N Dec. 77, 79–80 (BIA 1989). The Director did not commit error here when they sought additional probative material to corroborate the contribution of major significant assertions within the letters (i.e., to establish the claims within the letters was probably true).

Next in the appeal brief, the Petitioner continues down this road discussing the letters; this time those offered in the request for evidence (RFE) response. Within the appeal brief he states:

> And yet another example, the Decision stated that we failed to "submit evidence which demonstrates how the [petitioner's] work was more heavily relied upon in their works" and we did not "provide any supporting evidence to show that the [petitioner's] contributions were cited as original contributions of major significance in the field"[]. These conclusions are plainly contradicted by the letters of recommendation submitted in the RFE Response, which both report how the authors of these letters and their researchers relied "more heavily" upon [the petitioner's] research and consider his work to be original contributions of major significance to the field . . . .

The Petitioner generally points to the letters in the RFE response without specifying which letters or what portions of them corroborate his assertions. Before we discuss any of those letters, we put the Director's statements in full context, which it does not appear that the Petitioner conveyed in the above quote from his appeal brief. The Director stated:

> The record contains articles and Google Scholar profiles from other researchers who cited the [petitioner's] work, and counsel asserts that this serves as objective, documentary evidence that the [petitioner's] work has provoked widespread public commentary in the field or has been widely cited. While it is evident that other researchers cited the [petitioner's] work, the petitioner did not submit evidence which demonstrates how the [petitioner's] work was more heavily relied upon in their works as his work is among dozens and hundreds of other cited sources comprised of hundreds of other researchers. Such citations are generally representative of the collaborative process of scientific research, and the petitioner did not provide any supporting evidence to show that the [petitioner's] contributions were cited as original contributions of major significance in the field.

The Petitioner's appeal brief is unresponsive to the Director's allegation that he did not submit evidence demonstrating how his work was more heavily relied upon in the letter author's works, as his work was among a large amount of other cited sources.

Because the Petitioner failed to specify what letters to consider and why any aid in demonstrating he has fulfilled this criterion, we will select a sample of the letters. In Dr. [redacted] letter, he discussed the Petitioner's work and noted how other researchers relied on his prior findings. One such instance he mentions was in a paper titled [redacted] in which Dr. [redacted] stated these researchers relied on the Petitioner's work "as a foundational framework to explore the molecular mechanisms underlying the antitumor activity of the natural compound shikonin, specifically focusing on its inhibition of PKM2."

While we agree this paper cites to the Petitioner's work, it does not appear to be a "foundational" reliance nor does it seem to showcase the significance of his research to novel findings and progress in the field as Dr. [redacted] asserts. Instead, the authors stated one finding from the Petitioner's published work, then explained their method of exploring the mechanisms underlying the effect of shikonin on mitochondria. The Petitioner's cited paper did not study how shikonin impacted cellular function.

In all, this paper used a single sentence to cite to the Petitioner's study, and he was cited one time among 40 other published works. The Petitioner did not explain how those results support his claim that "the authors of these letters and their researchers relied "more heavily" upon [the Petitioner's] research and consider his work to be original contributions of major significance to the field." Additionally, neither Dr. [redacted] nor the Petitioner explain how his findings helped to significantly advance these authors' work in the field. Even when others have adopted a claimed contribution to the industry, but those efforts have not borne a result that has significantly impacted the field, that cannot be the type and level of contribution that might satisfy this criterion's demanding requirements. *Amin*, 24 F.4th at 393–94.

We now move to the Petitioner's claim that the Director presented false information because they "reject[ed] these letters because they 'repeat the regulatory language' but did not otherwise explain how [the Petitioner's] contributions 'have already influence the field' []. It is immediately clear from these letters that they do not contain regulatory language and they clearly describe how [the Petitioner's] contributions have influenced the field." Here, the Petitioner identifies two letters within the initial filing that he states described how his contributions have had an influence on the field at a level sufficient to satisfy this criterion's requirements.

The first letter is from Professor [redacted] from the [redacted] The professor described the Petitioner's work as highly beneficial and novel and he offered some examples to support his statements. But the act of simply furthering the field's understanding relating to cancer growth does not amount to a contribution of major significance. Nor does producing new information about manipulating elements when treating cancer, unless the professor is able to identify how that new information moved the field forward in some measurable or discernable way.

The developments Professor [redacted] described appear to be developments that might aid in the field's understanding, but at this stage it does not appear this progress has already and adequately pushed the field forward. Professor [redacted] does not state that the Petitioner is the researcher who discovered any of the research findings he discusses in his letter, and it appears that most of his dialogue relates to preexisting information the Petitioner has confirmed through his own work.

While the professor's letter stated that the Petitioner's work provided important insights, he does not specifically address how the Petitioner's original work has made an impact in the field at large. His comments tend to indicate that the Petitioner has made incremental progress to the common repository of knowledge. We might analogize this to someone adding pieces to a scaffold—poles, planks, braces—but until enough are assembled, those parts don't form a new section of platform. Each piece is essential, but without completing the necessary components, it remains in an unfinished stage and not a full, usable section. Even though the Petitioner has added some parts to this conceptual scaffolding, his contributions have not yet been adequate to form a new platform for the field to stand upon. And that falls short of this criterion's demands.

Professor [redacted] authored the second letter from the initial filing. He is an assistant professor of medicine at [redacted] and a physician at the [redacted] The professor met the Petitioner one time at a recent conference but primarily is familiar with him through his work. Professor [redacted] stated the Petitioner's influence on the field is indicated by his inclusion in a wide range of prominent scientific journals, all of which assess the submitted works' quality and value before accepting them.

While publishing in prestigious journals might suggest the Petitioner's research is valuable, it does not necessarily mean that his valued research has significantly contributed to the field as a whole. Publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of major significance. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual (reflecting that evidence that the person's work was published, while potentially demonstrating the work's originality, will not necessarily establish that the work is of major significance to the field).

The professor continued describing one of the Petitioner's studies relating to translocation renal cell carcinoma and he concluded that "[t]he findings of this study were significant." Professor [redacted] indicated the Petitioner's work in this area "notably advanced treatment strategies for a cancer for which viable treatments are currently limited, and it contributed greatly to the study of chromosomal translocations and their relationship to tumor development." But the professor did not describe how the Petitioner's research made such advancements, nor did he describe how those advancements have already made an impact within the field.

He also noted other ways in which the Petitioner's research has added to the field's knowledge and stated this foreign national's observations created pathways to better outcomes and strategies for evading cancer treatment resistance. Again, what is absent from the professor's portrayal is specifics on how they have affected the field: what those better outcomes and strategies are, how prominently they are being implemented in the field, and what has resulted from their implementation. In the end it appears that Professor [redacted] views the Petitioner's overall research findings to have impacted the field without offering adequate specifics that might demonstrate he has satisfied this criterion's requirements. After reviewing the letters the Petitioner presents as demonstrating his eligibility under this criterion on appeal, we do not agree with his contention that they are adequate.

Next, the Petitioner claims USCIS failed to issue clear findings of fact and he alleges "the Decision failed to observe the basic guidelines presented in the USCIS Policy Manual that govern the consideration of original contributions of major significance." The Petitioner describes that process as first determining whether a foreign national has made original contributions, then whether those are of major significance to the field. It appears the Petitioner alleges the Director's decision contains frippery rather than the most basic elements outlined in the USCIS Policy Manual. It further appears the Petitioner expects a strict presentation in which the Director separates out their discussion limiting one portion of the analysis to originality and another portion to whether the contributions were of major significance.

Despite the Petitioner's contention that the Director "failed to issue clear findings on either matter," reviewing the denial decision reveals they acknowledged that the Petitioner's work was original. And when discussing his citation record, letters, and the extent to which other researchers have relied on his work, the Director repeatedly decided the evidence did not demonstrate the Petitioner had already made contributions to his field that were of major significance.

Also, the Petitioner expresses disagreement relating to what his evidence demonstrated and whether he offered evidence to establish that the amount of citations to his published work is indicative of major significance to the field. The Director stated the Petitioner "did not submit evidence to demonstrate that the amount of citations is indicative of major significance," then discussed the material he supplied from Clarivate Analytics relating to baseline citation rates. The Director then decided the Petitioner did not submit adequate evidence to make a showing that his citation rates and percentiles place him among the top in his field for the relevant publication years.

Regarding the Petitioner's citation record, he points to the evidence showing his record ranks among the top ten percent of the most cited articles in Biology & Biochemistry in the respective publication years, and one paper in the top one percent for that same category. Before the Director, the Petitioner provided his Google Scholar profile, a chart from Clarivate Analytics InCites Essential Science

Indicators reflecting the baseline citation rates for various research fields between 2013 and 2023, and OpenAlex citation percentiles with cancer designated as the area of research.

The Petitioner's appeal does not explain why he selected the Biology & Biochemistry research field in Clarivate Analytics rather than Oncology or Molecular Biology & Genetics, which corresponds with a higher citation rate. The documentation supporting the Clarivate Analytics evidence indicated that "[a] citation rate is the average number of citations received by a group of papers published in one research field in a given year." The issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where his citation rates rank among the average. A more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. The Petitioner has not demonstrated, as he asserts, that his articles at the time of filing, using InCites Essential Science Indicators methodology through citation numbers and percentiles, resulted in original contributions of major significance in the field.[3]

The Petitioner's final claim regarding citations relates to content in the USCIS Policy Manual. The Petitioner contends the policy reflects his claims and evidence are adequate to fulfill this criterion's requirements. However, we do not agree with the Petitioner that the USCIS Policy Manual states a high citation record is enough. Agency policy also requires a significant reaction to the published work throughout the field when it states:

> Analysis under this criterion focuses on whether the person's original work constitutes major, significant contributions to the field.
>
> . . . .
>
> For example, published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor.

See generally 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). So, agency policy does not reflect what the Petitioner alleges, because a foreign national must also show how potentially influential research has generated substantial discussion among peers in the field. For instance, that could mean more than citations and might include invitations to serve as a keynote speaker or to participate on panels at major conferences, media coverage, etc.

In general, comparing the Petitioner's cumulative citations to those of others in the field in an attempt to draw a conclusion of his comparative impact in the field, is often more appropriate within a final merits determination after he has satisfied at least three regulatory criteria. Such a comparison may assist in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor. However,

[3] The Petitioner's documentation from Clarivate Analytics reflects that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution." Stated differently, the Petitioner did not sufficiently show the reliability of these figures.

the comparison of citations to a particular scientific article may be relevant for this criterion in order to establish the overall field's general view of a contribution of major significance. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). *See also Visinscaia*, 4 F. Supp. 3d at 134–35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

And finally, the Petitioner notes the Director did not discuss his fiscal year 2021 Department of Defense funding grant. We acknowledge the two-level process of review associated with this funding grant in which they received 67 compliant applications and recommended 10 of those for funding. This monetary grant simply fund 10 scientist's work.

Every successful scientist who engages in research, receives this or another form of funding where their past achievements are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. But to the point, a research funding grant is principally designed to fund future research, and not to honor or recognize past contributions of major significance in a given field. In fact, the Petitioner does not identify any evidence that establishes this funding grant was issued due to his major contributions to the field. While such funding is notable, it does not establish that the grant was prima facie evidence that the awardees have made contributions of major significance in their respective fields. Agency policy further speaks to the issue of funding:

> Evidence that the person's work was funded, patented, or published, while potentially demonstrating the work's originality, will not necessarily establish, on its own, that the work is of major significance to the field.

See generally 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." (emphasis added). We recognize the Petitioner's original contributions to his field, some of which have exerted some level of impact. But without additional, specific evidence showing that the Petitioner's work has been unusually influential, widely applied by the field, or has otherwise risen to the level of contributions of major significance, he cannot establish that he meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

Here, the Petitioner has not shown the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.